

The Position of Competition Authorities Within Government

Speech by Kazuhiko Takeshima Chairman of the Japan Fair Trade Commission Presented at ICN Annual Conference Merida, June 23- 25, 2003

Thank you Chairman, Ladies and Gentlemen, My name is Kazuhiko Takeshima. I am the Chairman of the Japan Fair Trade Commission. It is indeed a pleasure and a privilege to have this opportunity to speak at the ICN annual conference.

I would like to start my speech by saying that it is quite common among many countries to classify the functions of competition authorities into two broad categories. The first category is enforcement of competition laws. The second is competition advocacy.

From the standpoint of enforcement of competition laws, competition authorities must be free from all political influence and ensure their independence and neutrality. Furthermore, even though as a part of a government, the competition authority should desirably maintain an arms-length relationship with other government institutions that will enable the competition authorities so as to eliminate influence from interested parties.

On the other hand, from the standpoint of competition advocacy, especially in relation to other government agencies, it is necessary to display an effective check function against regulatory authorities. Therefore, it is desirable that within the government, the competition authority should establish itself in a position that enables them to demonstrate sufficient operative influence, and ensure its close relationship with other government institutions.

As this suggests, the preferred position of competition authorities may differ according to the respective functions. For this reason, it may be an idea to have several authorities share responsibility for the respective functions.

To promote fair and free competition in the marketplace, however, these dual

functions constitute the two sets of wheels on an automobile. By combining both functions together, it becomes possible to make full use of the specialized knowledge and accumulated experience within the competition authority, making it possible to display even more effective capabilities based upon synergistic results. Accordingly, I believe many competition authorities seek to position themselves on the assumption that they will be responsible for both functions. I should add, however, that situations may differ from country to country, depending upon which of the two functions to be emphasized, as may be required by the circumstances in which each country finds itself.

Furthermore, the policies that receive priority in each country will also change over time. This means that depending on the changes, governments should review the position of the competition authorities. Governments must always seek to realize the most desirable position of competition authorities, and by doing so strengthen their effective competence.

Now I would like to take the example of Japan.

Japan enacted its Antimonopoly Act in 1947, fifty-six years ago, and the JFTC was established as the institution empowered to administer the Antimonopoly Act.

In order to maintain neutrality and independence within the government, the JFTC was set up as an independent administrative commission which is quite unique in the Japanese government system.

The Chairman and Commissioners of the JFTC are not directed or supervised by any other government agency but are independent in the performance of their duties to administer the Antimonopoly Act, that position is guaranteed by the Antimonopoly Act.

Then, does this mean the JFTC has maintained an existence in splendid isolation within the Japanese government? Such is not the case.

Since Japan became a member of the OECD in 1964, the JFTC has actively participated in the Competition Committee of the OECD and acknowledges that the role of competition authorities also encompasses competition advocacy.

For example, based on the *Recommendation of the Council on Competition*

Policy and Exempted or Regulated Sectors of 1979 that recommended each OECD member country to review its government regulatory system, the JFTC conducted a survey on Japan's actual situation and published its opinion in 1982. Using this as a beginning, the JFTC has exercised influence by requesting such reviews to other participating government institutions in the process of legislative and administrative coordination.

Compared to the situation at the beginning of the 1980s, Japan's deregulation is considerably advanced. I believe the JFTC's incessant efforts are also making a substantial contribution to this process.

As one additional point related to the positioning of competition policy, I would like to touch upon the transfer of the JFTC to the Cabinet Office in the Japanese Government.

In Japan, the central government ministries and agencies were reorganized in January 2001 as part of government reform, and the JFTC was newly positioned as an external organ of the Ministry of General Affairs. Nevertheless, after this reform, the argument emerged that it is necessary to review the position of the JFTC for the following reasons.

First, economic structural reform has become an urgent issue for Japan's entire government in order to restore Japan's economy. Given this situation, the recognition has grown that aggressively developing competition policy as an integral part of regulatory reform is particularly important, and that by its nature competition policy should be positioned most fundamentally at the heart of economic policy. As a result, it was considered appropriate to reposition the JFTC as an external organ of the Cabinet Office, which presides over the planning and drafting of important Cabinet policies.

The second reason was that amidst international moves to deregulate the telecommunications sector, expectations towards the competition authority to address this issue were heightened also in Japan.

Nevertheless, the "Ministry of General Affairs" whose English name is the Ministry of Public Management, Home Affairs, Posts and Telecommunications, is also given jurisdiction over the telecommunications business, and concerns were

expressed regarding whether the JFTC could provide independent decisions and demonstrate a fair and impartial role from the viewpoint of competition policy while under the purview of the same Minister, and whether conflicts of interest would arise.

As I mentioned earlier, the independence of the JFTC to exercise its official authority is clearly stipulated in the Antimonopoly Act, and in reality it is not a major problem under which ministry the Commission is positioned. To make the Commission's independence from regulatory authorities clear to outside observers, however, and to eliminate any concerns in this regard, it was deemed appropriate to transfer the Commission to the Cabinet Office, which does not have jurisdiction over any particular business sectors.

With the background mentioned above, the related bill was submitted to Japan's Diet at the beginning of this year and approved unanimously and promulgated by the Diet, and effective on April 9 this year, two months ago.

As I've discussed here, it is important for the JFTC to demonstrate its role as a competition authority while working to fulfill the two functions of competition law enforcement and competition advocacy. I believe the current position of the JFTC is the best for demonstrating these roles.

It is individuals, however, who run any organization and each official's sense of mission and efforts to achieve the organization's objectives are critical. Regardless of how good an organization may be, if there is no spark of life from the perspective of execution or operation, the organization will be unable to meet public expectations.

The JFTC is being increasingly asked to ensure the benefits of the general public and contribute to sound economic development. Although nearly one year has passed since I was appointed as the chairman of the JFTC, in light of my five-year term of appointment and my position, which protects independent execution of the authority I have, I will work aggressively to foster understanding of Japanese people and those of other countries and execute the responsibilities I have been given.

This concludes my remarks today. Thank you very much for your attention.